IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2179 OF 2004

IN

SUIT NO.2150 OF 2004

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Yoshita (India) Electronics
Pvt.Ltd. ...Plaintiffs

v/s.

Mahanagar Telephone Nigam Ltd. ...Defendants

...

Mr.J.S. Kini for the Plaintiff.

Ms.S.I.Shah i/b S.I. Shah & Co. for Defendant No.1.

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CORAM: D.K.DESHMUKH, J.

DATED: 16TH JUNE,2005

P.C.:

1. This Notice of motion is taken out by the Plaintiff. The learned Counsel appearing for the Plaintiff stated that he is not pressing the reliefs which are claimed by prayer clauses (a) and (c). That leaves only prayer clause (b). Prayer clause (b) reads as under:-

> (b) That pending the hearing and final disposal of this suit this Hon'ble Court be pleased to pass mandatory order directing the Defendants to disclose on oath the details of the alleged fraudulent booking in respect of its entire working including that of the Plaintiffs herein and of the action taken in respect of the fraudulent booking in respect of the matters concerning any of the franchisees in Bombay.

2. According to the learned Counsel for the

Plaintiff the court has power to grant this relief under Section 151 of the Civil Procedure Code. He submits that the Defendant No.1 Mahanagar Telephone Nigam Ltd. has committed fraud and because the Plaintiff was trying to expose that fraud, his claim has been withheld. The Plaintiff is claiming decree in terms of prayer clauses (a), (b) and (c). Prayer clauses (a), (b) & (c) reads as under:

> (a) That this Hon'ble Court be pleased to declare that the action of the Defendant No.1 in not initiating legal action for recovery of the amounts in respect of Fraudulent Telephone Bookings and seeking to blame the Plaintiff for the same is bad in law, illegal and incorrect.
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> (b) That this Hon'ble Court be pleased to pass orders ordering the Defendant No.1 to pay the amount of Rs.8,43,834/- (Rupees Eight Lakhs Fourty Three Thousand Eight Hundred and Thirty Four Only) being the balance amount of commission payable by the Defendants to them in pursuance of the said

Agreement, being Exh."A".

(c) That this Hon’ble Court be pleased to declare that the action of the Defendant No.1 in seeking to withhold commission amounts of the Plaintiff is illegal, bad in law and incorrect.

3. Perusal of prayer clause (a) quoted above shows that the relief in terms of prayer clause (a) cannot be granted because by prayer clause (a) the Plaintiff is merely seeking a declaration that the action of the Defendant No.1 of not initiating legal action is bad in law. He is not claiming any consequential relief which it was possible for him to claim. Therefore, in view of the provisions of Section 30 of the Specific Relief Act the court will not have the power to grant merely a decree of declaration when the Plaintiff omits to claim further relief which was possible for the Plaintiff to claim. So prima facie the Plaintiff is not entitled to a decree in terms of prayer clause (a).

4. Prayer clauses (b) and (c) are related. By

prayer clause (c), the Plaintiff claims declaration that the action of the Defendant in withholding the amount of claim is illegal and by prayer clause (b) he is seeking a money decree, as a consequence of declaration claimed in prayer clause (c). Thus, this is a suit for a money decree. Perusal of of prayer clause (b) of the Notice of Motion which is quoted above shows that the Plaintiff is claiming an order directing the Defendant to disclose on oath the details of the bookings which the Plaintiff describes as fraudulent. All those bookings which are to be produced by Defendant No.1, according to the Plaintiff, are in respect of its entire working. He also wants the Defendant No.1 to produce the documents regarding action taken by them in relation to the bookings which the Plaintiff describes as fraudulent. Now the documents that are in possession of the Defendant No.1 will be enquired when the suit comes for trial. The Plaintiff is not seeking any interim order for the consideration of which the evidence that may be in possession of the Defendant No.1 may become relevant at this stage. Therefore, obviously the evidence which is mentioned in prayer clause (b) of the Notice of Motion would be relevant for the trial. I do not find any

material produced on record to indicate as to how the evidence which will be relevant at the time of trial is necessary to be produced at the behest of the Plaintiff by the Defendant No.1 at this juncture, when even written statement of the Defendant No.1 is not on record. Obviously, therefore, issues have also not been framed. The power of the court to grant interim relief is to be exercised in aid of the final reliefs that may be claimed. The interim relief for production of documents, in my opinion, cannot be granted, because the suit of the Plaintiff is basically for a money decree. The entire burden of proof to prove the facts that have been alleged in the plaint is on the Plaintiff. Assuming that the documents, on which the Plaintiff is relying, are in possession of the Defendant No.1. By following the provisions of the Evidence Act the Plaintiff can get the documents produced. Taking out the Notice of Motion for production of documents at interim stage is not the method sanctioned by law. This was pointed out to the learned Counsel appearing for the Plaintiff at the very beginning of the hearing. But the learned Counsel insisted and argued the entire matter at length. He relied on two judgments, one judgment of

the Division Bench of Rajasthan High Court in case of Associated Cement Companies Ltd. v/s. The State of Rajasthan and anr., AIR 1981 Rajasthan 133, and the judgment of the Supreme Court in the case of Rupa Ashok Hurra v/s. Ashok Hurra and anr., (2002) 4 SCC 388. Perusal of those judgments shows that nothing said in those two judgments is relevant, even remotely, for deciding this Notice of Motion. Nothing said in those judgments can justify taking out the Notice of Motion for production of evidence at a stage even a written statement is not filed. It goes without saying that the Notice of Motion is without any substance. The learned Counsel appearing for the Plaintiff despite being cautioned by the court, wasted considerable time of the court in arguing the Notice of Motion.

5. In this view of the matter, therefore, in my opinion, merely rejection of this Notice of Motion will not serve the interest of justice, exemplary costs will have to be imposed on the Plaintiff for taking out such frivolous Notice of Motion and then taking the time of the court. Notice of Motion disposed of. The Plaintiff is directed to pay, as and by way of costs of this Notice of Motion, an

amount of Rs.25,000/- to the Defendant No.1.

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